

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES UNION,

Plaintiff,

No. 1:19-cv-11311 (JSR)

v.

UNITED STATES CUSTOMS AND
BORDER PROTECTION and UNITED
STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendants.

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DECLARATION OF ERICK FUNN

I, Erick K. Funn, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am the Director of Specialized Operations Unit (SOU), Investigative Operations Division (IOD), Office of Professional Responsibility (OPR), U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS). I have been employed with CBP since April of 2009. I have held this position since approximately August of 2019. During my 26 years of federal service, I have held various leadership positions, including Executive Director, IOD; Director, IOD; Director, SOU; Deputy Director, IOD; Special Agent in Charge; and Special Agent.

2. In my role as the Director of SOU, I am responsible for executing the missions of CBP and, in particular, OPR. The OPR is responsible for ensuring compliance with all CBP-wide programs and policies relating to corruption, misconduct, or mismanagement, and for executing CBP's internal security and integrity awareness programs. Through its national headquarters in Washington, D.C., and strategically located regional field offices, OPR screens potential CBP employees for suitability; conducts polygraph examinations for law enforcement positions; educates employees concerning ethical standards and integrity responsibilities; investigates allegations of employee corruption and serious misconduct, and evaluates security threats to CBP employees,

facilities, and sensitive information.

3. In my current position, I supervise three (3) separate units: Technical Operations; Cyber Investigations; and Corruption Review and Investigation Unit (CRIU). Technical Operations provides direct subject-matter expertise and support to manage IOD's covert activities, electronic surveillance, and ensures the operative reliability of these specialized and complex investigative techniques. Cyber investigations mission is to provide professional computer forensic and investigative services related to technology. CRIU conducts long-term criminal investigations of CBP employees with significant histories of corruption allegations.

4. This declaration is based on my personal knowledge and other information obtained in the course of my official duties and responsibilities. I make this declaration in support of Defendants' motion for summary judgment in the above-captioned case.

5. I am generally aware that Cell-Site Simulators (CSS) are devices that can be used to locate a cellular device whose unique identifiers are already known to law enforcement, or to determine the unique identifiers of an unknown device. By transmitting as a cell tower, cell-site simulators acquire the identifying information from cellular devices. This identifying information is limited, however. CSS provide only the relative signal strength and general direction of a subject cellular telephone.

6. A search of OPR's records conducted in response to the FOIA request at issue only identified one instance in which a CSS was used in support of a criminal investigation related to employee integrity and workforce security.

7. In 2017, U.S. Immigration and Customs Enforcement, U.S. Homeland Security Investigations (HSI) assisted CBP OPR by deploying an HSI CSS as part of a criminal investigation into a CBP employee's misconduct. The investigation is ongoing. The investigation does not involve an immigration matter.

8. CBP OPR does not possess any CSSs, nor does it use CSS in its ordinary course of

business.

9. Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on the 12th day of June, 2020.



Erick K. Funn
Director, Specialized Operations
Investigative Operations Division
Office of Professional Responsibility
U.S. Customs and Border Protection
Department of Homeland Security